

STATE OF TENNESSEE

Office of the Attorney General



PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207
NASHVILLE, TN 37202

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

RECEIVED

2003 JUN 19 PM 4:11

TRA. DOCKET ROOM

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

June 19, 2003

Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Tariff Filing To Modify Language Regarding Special Contracts, Docket No. 03-00366

Dear Chairman Kyle:

Enclosed is an original and thirteen copies of the Attorney General's Petition to Intervene in the above matter. We are forwarding copies of same to all parties of record. If you have any questions, please feel free to contact me at (615) 741-8733. Thank you.

Sincerely,

Vance Broemel
Assistant Attorney General

Enclosures

cc: All Parties

65664

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**TARIFF FILING TO MODIFY
LANGUAGE REGARDING SPECIAL
CONTRACTS**

)
)
)
)
)
)

DOCKET NO. 03-00366

PETITION TO INTERVENE

Comes now Paul G. Summers, the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A) and Rule 1220-1-2-.02 of the Tennessee Regulatory Authority (hereinafter "TRA"), and petitions the TRA to convene a contested case hearing and grant the Consumer Advocate's intervention in this proceeding on behalf of the public interest because consumers may be adversely affected by operation of the tariff filed by BellSouth Telecommunications, Inc. (hereinafter "BellSouth"). For cause, the Consumer Advocate would show unto the TRA as follows:

1. In order to represent the interests of Tennessee consumers, the Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118(c)(2)(A) to initiate a contested case and to intervene or participate in proceedings concerning public utility matters in accordance with the Uniform Administrative Procedures Act.
2. Only by intervening and participating in this proceeding can the Consumer Advocate work effectively to protect the interests of Tennessee consumers.

3. BellSouth is a public utility company regulated by the TRA pursuant to Title 65, Chapters 4 and 5, *Tennessee Code Annotated*. BellSouth's usual address for service of process is 333 Commerce Street, Nashville, Tennessee 37201-3300.

4. During the current legislative term the General Assembly passed Public Chapter No. 41, which reads as follows: "Notwithstanding any other provision of state law, special rates and terms negotiated between public utilities that are telecommunications providers and business customers shall not constitute price discrimination. Such rates and terms shall be presumed valid. The presumption of validity of such special rates and terms shall not be set aside except by complaint or action of the TRA directors, which TRA action or complaint is supported by substantial evidence showing that such rates and terms violate applicable legal requirements other than the prohibition against price discrimination. Such special rates and terms shall be filed with the authority." The Governor approved this new legislation on April 23, 2003.

5. The Contract Service Arrangements ("CSAs" or "special contracts") negotiated between BellSouth and its business customers are presently governed by TRA Rule 1220-4-1-.07, which provides that such contracts are subject to the supervision, regulation, control, review, and approval of the TRA. Moreover, TRA Rule 1220-4-1-.04 provides that "[a]ll tariffs, rate schedules or supplements thereto containing any change in rates, tolls, charges or rules and regulations must be filed with the [TRA] at least thirty (30) days before the effective date of such changes" Also, TRA Rule 1220-4-1-.06(4) provides that all tariffs or supplements "affecting Tennessee intrastate business shall be filed with the [TRA] at least thirty days before the date upon which they are to become effective" Finally, TRA Rule 1220-4-1-.03 provides that the contents of tariffs "must explicitly state the rates and charges for each class of service rendered . . . [and the] [r]ules and

regulations of the utility that in any manner affects the rates charged or to be charged or that define the extent or character of the service to be given”

6. Consistent with the TRA’s rules, the practice has been for each special contract to be filed along with a tariff summary and for the filing to be “evaluated and reviewed by Authority Staff to meet statutory requirements as well as guidelines reflected in settlement agreements and TRA orders.” *Second Report and Recommendation of Hearing Officer*, TRA Docket No. 00-00702 at p. 7 (May 5, 2003). Following this period of inspection and review, special contracts are approved or allowed to become effective if no defects are identified by the TRA or other interested parties.

7. BellSouth filed its tariff to propose modifications to the current process for review and approval of special contracts in order to reflect BellSouth’s interpretation of the new CSA law. The tariff provides, *inter alia*, that such special contracts shall become effective immediately upon filing with the TRA and that BellSouth will no longer include summaries of such contracts in its tariff.

8. BellSouth’s interpretation is incorrect and inconsistent with the plain meaning of the new legislation as well as current TRA rules and procedures that govern the tariffing, review and approval of contracts containing special rates and terms for telecommunications services.

9. The new CSA law: (a) creates a presumption of validity of the rates and terms negotiated between telecommunications service providers and business customers; (b) places the burden of rebutting the presumption upon the complainant; and (c) removes price discrimination as a basis for rebutting the presumption. Nonetheless, the presumption of validity may be set aside “by complaint or action of the TRA directors, which TRA action or complaint is supported by substantial

evidence showing that such rates and terms violate applicable legal requirements.”¹

10. The new CSA law does not address the timing of effectiveness of special contracts for telecommunications services nor does it address the tariffing requirements of such contracts. There are no inconsistencies between the new CSA law and the TRA’s pre-legislation rules and procedures for handling these contracts. Therefore, notwithstanding the enactment of Public Chapter No. 41, these rules and procedures should remain in place to assure that statutory requirements and TRA orders and guidelines are met.

11. Moreover, “[t]he new CSA law supports and continues the TRA’s discretion to take action when necessary to ensure that CSAs work to improve the competitive marketplace.” *Second Report and Recommendation of Hearing Officer*, TRA Docket No. 00-00702 at p. 7 (May 5, 2003).

12. The interests of consumers may be harmed if BellSouth’s CSAs are allowed to become effective before the TRA or other interested parties, including consumers, are given an opportunity to rebut the presumption of validity created by the new CSA law.

13. Accordingly, BellSouth’s tariff should be denied.

WHEREFORE, the Consumer Advocate prays that the TRA will convene a contested case proceeding to hear and determine the issues raised herein, grant the Consumer Advocate’s Petition to Intervene, and grant the Consumer Advocate and the consumers of Tennessee such other relief

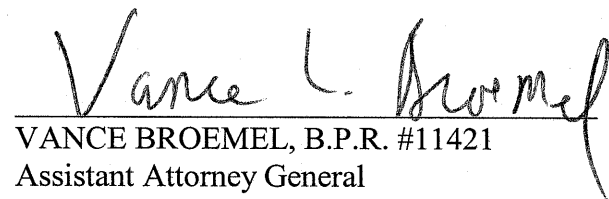
¹ BellSouth’s statement that “the statute instead directs that the rate may be ‘set aside’” is a gross mis-interpretation of the new legislation, which plainly states that the presumption of validity may be set aside, not the rate or contract. See *BellSouth Telecommunications, Inc.’s Response to AT&T Communications of the South Central States, Inc.’s Petition to Intervene*, TRA Docket No. 03-00366 at p. 5 (June 13, 2003).

as may be deemed appropriate under applicable law.

RESPECTFULLY SUBMITTED,



PAUL G. SUMMERS, B.P.R. #6285
Attorney General and Reporter



VANCE BROEMEL, B.P.R. #11421
Assistant Attorney General

Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-2590

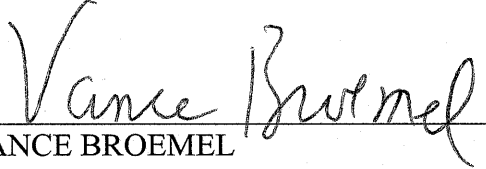
Dated: June 19th, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served on parties below via U.S. Mail or facsimile on June 19, 2003.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, Tennessee 37201-3300

Henry Walker, Esq.
Boult, Cummings, Conners & Berry
414 Union Street
Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219


VANCE BROEMEL
Assistant Attorney General

66071